



# PROTECTED LEAVE USE POLICY AND PROCEDURES

## 1. Purpose

This policy and procedure are to ensure the City of Woodburn complies with all federal and state laws regarding protected leave.

## 2. Scope

All City of Woodburn employees.

## 3. Policy

It is the policy of the City to comply with all federal and state laws concerning leaves of absence. The City provides protected leave in conformance with: (1) the Federal Family Medical Leave Act (FMLA); (2) Oregon Family Medical Leave Act (OFLA); (3) Oregon Crime Victims Law; (4) Oregon Victims of Certain Crimes Leave Act (OVCCLA); (5) Oregon Military Family Leave Act (OMFLA) and (6) Paid Leave Oregon (PLO)/Oregon Paid Family Leave Insurance (PFMLI) program.

## 4. Procedures

### A. The Relevant Laws:

- a. FMLA: Family Medical Leave Act (FMLA): A federal law that provides unpaid protected leave (up to 12 weeks or 480 hours) for serious health conditions of employees and their family members, the birth, adoption or foster care placement of a child, and leave time for pregnant employees to seek prenatal and postnatal care. The law also provides protected leave (up to 26 weeks) for employees to care for a family member injured or ill as a result of active-duty military service.
- b. Oregon Family Medical Leave Act (OFLA): A state law that provides unpaid protected leave for: serious health conditions of employees and their family

members, the birth, adoption or foster care placement of a child, bereavement leave, and leave time for pregnant employees to seek prenatal and postnatal care, sick child, and public health emergency leave. The Oregon law is more comprehensive, allowing more than 12 weeks or 480 hours per year under certain conditions.

- c. Crime Victim Leave: This law provides leave for an employee who is a crime victim who has personally suffered financial, social, psychological, or physical harm as the result of a felony, or who is a member of the immediate family of a crime victim. Leave may be used for attending criminal proceedings related to the circumstances of the crime.
  - d. Victims of Certain Crimes Leave Act (OVCCLA): This act is an extension of the OFLA and provides leave for an employee who is the victim of domestic violence, sexual assault, or stalking; or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault, or stalking. Leave may be used to seek legal or law enforcement assistance, to seek remedies to ensure health and safety, to seek medical treatment for injuries or to recover from injuries, to obtain counseling, to seek other domestic violence services, to relocate or secure existing housing, or to attend criminal proceedings related to these circumstances.
  - e. Oregon Military Family Leave Act (OMFLA): This act is an extension of OFLA and provides up to 14 calendar days of leave per deployment for a spouse or same-sex domestic partner of a member of the Armed Forces of the United States, the National Guard, or the military reserve forces.
  - f. e. Oregon Paid Family Leave Insurance (PFMLI) program: This is a program that allows employees in Oregon to take 12 weeks of paid time off for any combination of the following eligible leaves: Medical (serious health conditions of employee), Family (the birth of a child or bonding with a child, foster care placement of a child, to care for a family member with a serious illness or injury) and Safe leave (for survivors of sexual assault, domestic violence, harassment, or stalking). Employees may also qualify for up to two (2) additional weeks of leave related to pregnancy, childbirth or a related medical condition, including lactation. An additional four (4) weeks of unpaid leave is also allowed for other OFLA protected reasons.
- B. Benefit Year: For purposes of FMLA, OFLA and PLO benefit year means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that leave commences. (Note that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim).

**C. Eligible Employees:**

For FMLA, OFLA, and Paid Leave Oregon (PFMLI), see general eligibility program comparison chart below:

<b>ELIGIBILITY REQUIREMENTS</b>	<b>Paid Leave Oregon</b>	<b>OFLA</b>	<b>FMLA</b>
Covered Employers	All employers except federal or tribal governments	Employers with 25 or more employees	Employers with 50 or more employees and all public employers
Wages required to be eligible for leave	\$1,000 in wages the previous year	n/a	n/a
Required time worked for employer before taking leave and before job protection applies	No work time requirement for Paid Leave benefits, but must have worked 90 days to have job protection	180 days	12 months
Required hours worked for employer to be eligible for leave	n/a	25 hrs/week in past 180 days. <i>Does not apply to parental leave</i>	1,250 hours in previous 12 months
Geographic requirement	n/a	n/a	Location with 50 employees within 75 miles
<b>Eligibility requirement</b>			
<b>Not a requirement</b>			

\*The above chart does not cover all possible exceptions. Employees should consult the specific program law or rules directly to determine eligibility for each program.

- b. OFLA Public Health Emergency: Full-time or part-time employees who meet the qualifying purposes for OFLA Public Health Emergency leave and during a period of public health emergency, have been employed by the City

for at least 30 days immediately prior to taking leave and have worked an average of 25 hours or more per week during those 30 days.

**D. Qualifying Purposes of Leave:**

With the exception of PFMLI, the City designates leave based on qualifying conditions, regardless of whether the employee has leave accruals to cover the absence or whether the employee requests family medical leave.

For FMLA, OFLA, and Paid Leave Oregon (PFMLI), see the qualifying purposes comparison chart below:

<b>QUALIFYING PURPOSES</b>	<b>Paid Leave Oregon</b>	<b>OFLA</b>	<b>FMLA</b>
<b>Family Leave</b>			
Birth, adoption or foster placement	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Family member's serious health condition <i>(family member definitions vary)</i>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Medical Leave</b>			
Individual's own serious health condition	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Safe Leave</b>			
Domestic violence, sexual assault, harassment or stalking	<b>Yes</b>	<b>No</b> <i>Serious health condition and reasonable safety accommodations under ORS 659A may include leave.</i>	<b>No</b>
<b>Other Leave Types</b>			
Extended leave for a pregnancy* <i>*In addition to leave for serious health condition</i>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
Sick child leave	<b>No</b>	<b>Yes</b>	<b>No</b>
Military family leave	<b>No</b>	<b>Yes</b>	<b>Yes</b>
Bereavement leave	<b>No</b>	<b>Yes</b>	<b>No</b>
Public health emergency	<b>No</b>	<b>Yes</b> Active Public Health Emergency allows for sick child leave for school/child care closures	<b>No</b>
<b>Covered</b>			
<b>Not Covered</b>			

Definitions of certain Qualifying Purposes under the protected leave laws include the following:

- a. Family Leave (PFML):

- i. to bond with a new child after birth, adoption, or foster placement; can be taken within the first 12 months after the birth, adoption, or placement.
  - ii. to care for a family member experiencing a serious health condition.
- b. Medical Leave (PFML): for an employee's own serious health condition.
- c. Safe Leave (PFML): for survivors of sexual assault, domestic violence, harassment, or stalking to obtain legal or law enforcement assistance, seek medical treatment or recover from injuries, obtain counseling or support services, or relocate or take other steps to secure the health and safety of themselves or their dependent child.
- d. Extended Leave for Pregnancy (PFML): Additional leave (limited to two weeks) related to pregnancy issues for a birthing parent in addition to the 12 weeks provided for family leave.
- e. Sick Child Leave (OFLA): To provide home care for a child under the age of 18 with a non-serious health condition, provided another family member is not willing and able to care for the child (Oregon Sick Child Leave). Sick child leave includes leave needed to provide home care due to the closure of the child's school or childcare provider as a result of a public health emergency.
- f. Pregnancy Disability Leave (OFLA): For pregnancy disability, including before or after the birth of a child, or for prenatal care.
- g. Military Family Leave: To care for a spouse, parent, child, or next of kin who is a covered service member or veteran. The covered service member or veteran must have a serious injury or illness incurred or aggravated while on active duty (leave must begin within five (5) years of the veteran leaving military service). For an exigency leave related to a spouse, child, or parent of a covered service member who is on active duty, called to active duty, and during leave from deployment.
- h. Bereavement Leave (OFLA): For the death of a qualifying family member (OFLA). Employee is provided up to two weeks of leave for three death-related purposes: attending the funeral or alternative to a funeral of a family member; making arrangements necessitated by the death of the family member; and/or grieving the death of the family member.
- i. Public Health Emergency Leave (OFLA) Public health emergency requires a proclamation by the Governor to protect public health.
- j. Crime Victim Leave & Victims of Certain Crimes Leave: To seek legal assistance, medical treatment, counseling, or to relocate or secure an existing residence when the employee is a victim of domestic violence, sexual assault, or stalking; or the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault, or stalking. Or to attend a criminal proceeding as a crime victim or family member of a crime victim.

For purposes of the Qualifying Purposes for Leave outlined above, the definition for “Family” is established by law. Family may be defined under different type of protected leaves as follows:

- The spouse of a covered individual;
  - A child of a covered individual or the child’s spouse or domestic partner;
  - A parent of a covered individual or the parent’s spouse or domestic partner;
  - A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse or domestic partner;
  - A grandparent of a covered individual or the grandparent’s spouse or domestic partner; A grandchild of a covered individual or the grandchild’s spouse or domestic partner;
  - The domestic partner of a covered individual; or
  - Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.
- k. FMLA: Spouse, parent, or child under the age of 18 who has a serious health condition, or a mentally/physically impaired child aged 18 or over

The City designates leave based on qualifying conditions, regardless of whether the employee has leave accruals to cover the absence or whether the employee requests family medical leave. Request for protected leave will be evaluated by the Human Resources Department on a case by case basis.

#### **5. Request for Protected Leave:**

PFMLI: Although the plan is administered by Paid Leave Oregon, City of Woodburn requires employees to notify City Human Resources Department when they have applied for PLO leave.

If an eligible employee fails to give notice as required in this section, the Director of the Employment Department may reduce the first weekly benefit amount payable to the employee under ORS 657B.090 by up to 25 percent.

- a. Anticipated Situations: If the need for PLO leave is foreseeable or planned, the employee is required to provide Human Resources at least 30 days’ written notice before paid leave is to begin. Written notice should be submitted using the Protected Leave Application form.
- i. An employee who intends to take leave to attend a criminal proceeding must give reasonable notice to a supervisor of the impending leave once the employee has received official notice of the proceeding.

- ii. An employee who intends to take domestic violence-related leave must give reasonable notice to a supervisor of the impending leave unless giving advance notice is not feasible.
  - iii. An employee who intends to take military-related leave must give notice to a supervisor within five business days of receiving official notice of an impending call or order to active duty, or of a leave from deployment.
  - iv. Upon notice, the City will provide the employee with a Protected Leave Application Form HR-FMLA/02, which must be completed and returned to Human Resources Department as soon as is practicable.
- b. Unanticipated Situations: If the need for PLO leave is unforeseeable or unplanned, an employee or their family member is required to provide oral notice to Human Resources within 24 hours of the start of the leave, and the employee must also provide written notice within three (3) days after the start of the leave. Written notice should be submitted using the Protected Leave Application form.

Timing and duration of leave should include the employee's plan for taking leave on an intermittent basis or in one block of time.

If the employee's dates of scheduled leave change, are extended by PLO, or if the reason for leave changes and/or, if circumstances change during the leave and the leave period differs from the original request, the employee must notify the Human Resources within two (2) business days, or as soon as possible.

Regardless of the reason for leave, or whether the need for leave is foreseeable, employees are expected to comply with City's absence notification procedures to their supervisors.

**6. Certification:**

- a. Certification of the need for family medical leave may be required. If certification is required in the event of an employee health condition or that of a family member, it must be provided by a medical professional on the applicable certification form within 15 days of the request for family medical leave. Failure to provide required medical certification may delay the start of family medical leave or may cause the denial of family medical leave.
- b. The employee may be required to furnish the City with periodic medical reports as frequently as every 30 days. A recertification may be requested in less than 30 days if the circumstances described by the previous certification have changed, if the employee requests an extension of leave, or if the City receives information that causes it to doubt the employee's stated reason for the absence or the

continuing validity of the existing medical certification. In all cases, the City may request recertification every six months.

- c. In the event of a request for parental leave to care for a newly adopted child or a newly placed foster child, the employee may be required to provide verification from the agency representative regarding the adoption or placement of the child.
- d. In the event of a request for child care during a public health emergency, the employee may be required to provide verification of need for this leave.
- e. In the event of a request for domestic violence-related leave, the employee may be required to certify that he/she qualifies for leave and that the leave is to be taken for an authorized purpose.
- f. In the event of a request for leave to attend criminal proceedings, the employee may be required to provide copies of the notice of the scheduled proceedings.
- g. In the event of a request for military care giver or exigency leave, the employee may be required to provide travel orders, medical certification, active duty orders, or other appropriate facts related to the particular qualifying exigency for which leave is sought.
- h. In the event of a request for bereavement leave under OFLA, if the employee commences leave without prior notice, oral notice must be given to the City within 24 hours of commencing leave, and a written notice must be given within 3 days of returning to work.

## **7. Intermittent or Reduced Schedule:**

- a. When medically necessary, family medical leave may be requested to be taken on an intermittent or reduced schedule; details of the proposed schedule must be verified by the certifying medical professional on the applicable certification form.
- b. Employees who have received a designation of intermittent family medical leave must comply with the sick leave notification policy in effect in his or her division or department. Failure to do so may result in disciplinary action.
- c. Intermittent leave or a reduced schedule is allowed upon the adoption of a child, or the placement of a foster child, to accommodate the required legal process leading to the adoption of a child or the placement of a foster child.
- d. Intermittent leave or a reduced schedule for bonding purposes upon the birth or adoption of a child is allowed only with the pre-approval of the Department Director of the employee. Employees must turn in the requested intermittent schedule to Human Resources Department who will obtain the response from the Department Director.
- e. PFMLI, leave may be taken intermittently that are equivalent to one workday or one work week. Employees can take leave all at once (consecutively) or in

separate blocks of time (non-consecutive). Consecutive leave is taken in one block of time due to a single qualifying event (such as five weeks of leave for a knee surgery). Nonconsecutive leave is taken in separate blocks of time due to a single qualifying reason (such as one day every week for 12 weeks for chemotherapy).

**8. Designation of Leave:**

- a. When the qualifying purpose of the leave is covered under both FMLA and OFLA, the leave will be designated concurrently toward the time allowed under both laws. If the qualifying reason for taking PFMLI leave also qualifies the employee for unpaid leave under the OFLA and FMLA, the employee must take such leave concurrently. Employees must submit to the city a completed Protected leave application form.
- b. Leaves potentially covered under workers' compensation will be designated under FMLA if the absence is for a qualifying purpose under the applicable laws.

**9. Use of Accrued Leave during FMLA/OFLA:**

Unless specified otherwise under the applicable collective bargaining agreement, the following accrued leave may be used by employees that qualify for protected leave:

- a. While on FMLA/OFLA leave for their own serious health condition, employees will use sick leave first, then vacation, and then must use all other forms of leave prior to leave without pay.
- b. While on FMLA/OFLA leave for the serious health condition of a family member or for parental leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.
- c. While on Domestic Violence Leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.
- d. While on Victims of Certain Crimes Leave, employees can use any accrued leave available to them.
- e. While on Military Leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.
- f. OFLA Bereavement Leave shall run concurrently with any City paid bereavement leave, unless specified otherwise under the applicable collective bargaining

agreement. Employees may use any leave available to them after bereavement leave is used.

- g. For OFLA Sick Child Leave, employees will use sick leave for when leave is for a sick child. Employees shall use other available leave when the use is for home care due to school closures as a result of public health emergency.

#### **10. Use of Accrued Leave during PLO:**

Employees receiving PLO benefits may choose to supplement their PLO benefits with other available paid leave such as accrued sick, vacation, comp, police holiday, management or executive leave up to 100% of the employee's regular gross wage. To request use of employer compensation, employees are required to submit PLO leave request. If the employee chooses not to use with their leave time, then they need to request PLO – LWOP.

#### **11. Benefits while on Protected Leave:**

- a. FMLA/OFLA: While the employee is on an absence covered by FMLA/OFLA, the City will continue to pay its share of benefit premiums whether or not the employee is receiving wages while on leave. The employee will be required to pay the employee's regular contribution toward premiums.

- b. PLO: If an employee is on a state approved PLO leave, the City will continue the employee's medical and dental, life, long term disability coverage, on the same terms as when the employee began their PLO leave. An employee wishing to maintain coverage when on a state approved PLO leave, is responsible for paying their share of premiums. If the City pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while the employee is on PLO leave, the City will deduct from their pay the employee's share of health or other insurance premiums up to 10 percent of the employee's gross pay each pay period after the employee returns to work, until the health or other insurance premium amounts paid by the City are repaid, with agreement from the employee.

The City will terminate maintenance of an employee's benefits coverage effective when employment would have terminated if the employee had not taken PLO, or when the employee fails to return from leave; the employee's leave entitlement under PLO and other applicable leaves expires or if an employee gives clear notice of intent to not to return to work from PLO leave.

If an employee gives clear notice of intent to not to return to work from PLO leave, except as required by other state or federal law, the City's obligations under ORS chapter 657B to restore the employee's position and maintain any health care benefits cease on the date the notice is given to the City.

If an employee fails to return to work — unless the failure to return to work is because of a serious health condition or safe leave for which the employee would be entitled to PLO leave or another circumstance beyond the employee's control — the City will recover the employee's share of the health insurance premiums paid by the City. The City will use any legal means to collect the amount owed for the employee's share of health insurance premiums paid by the City, including deducting the amount from the employee's final paycheck.

An employee on PLO leave on a LWOP status is not entitled to accrue employment benefits during the period of leave. Employment benefits include but are not limited to accrual of seniority and other non-health-care-related benefits and leave accruals that would have accrued if the employee was working. Benefits an employee was entitled to and that accrued prior to starting PLO leave, including, but not limited to seniority or pension rights, shall be restored in full upon the employee's return to work. The benefits do not have to be restored if such benefits have been eliminated or changed for all similarly situated employees. While on PLO leave, an employee's leave accruals will only continue to accrue if the employee remains under a paid status with the city.

#### **12. Return to Work:**

If an employee takes more than three consecutive scheduled workdays for their own serious health condition, and/or PLO leave was taken, concurrently with FMLA and/or OFLA, the employee must furnish, prior to returning to work, return to work form from the health care provider stating that the employee is able to resume work with or without restrictions.

#### **13. Other Provisions:**

f. Employees who work for other employers while taking PLO leave may be subject to discipline up to and including termination. Additionally, all employees who use PLO leave for reasons other than the reason for which leave had been granted may be subject to discipline up to and including termination.

a. Employees returning from family medical leave will be reinstated to the same or an equivalent position with equivalent benefits, pay, and other terms and

conditions of employment; unless their former positions have been eliminated for business reasons.

- b. Failure to complete and submit required documentation and/or submitting insufficient or incomplete documentation may result in denial or delay of protected leave designation.
- c. Any employee who separates from employment, irrespective of the reason, will have their OFLA eligibility restored to what it was prior to leaving their employment if the employee: (1) was eligible to take OFLA leave at the time of their separation and returns within 180 days; or (2) was eligible to take leave at the beginning of a temporary cessation of scheduled hours of 180 days or less and returns to work at the end of the temporary cessation.
- d. PFMLI leave: Employees who have been employed for at least ninety (90) days prior to the leave are entitled to return to their prior position after taking family or medical leave. If the City hired a replacement worker, and the eligible employee on PFMLI leave notifies the City that they are ready to return to work earlier than anticipated, the City shall give the eligible employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning on the second business day following the date the employee notified the City they were ready to end their leave and return to work.
- e. l. An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken any protected leave including PFMLI leave.

#### **14. Forms**

HR-FMLA/01 Protected Leave Instructions  
HR-FMLA/02 Protected Leave Application  
HR-FMLA/03 Protected Leave Release of Health Information  
HR-FMLA/04 Protected Leave Health Care Provider Certification –Self  
HR-FMLA/05 Protected Leave Health Care Provider Certification – Family Member  
HR-FMLA/06 Protected Leave Military Exigency Leave  
HR-FMLA/07 Protected Leave Military Caregiver  
HR-FMLA/08 Protected Leave Veteran Caregiver  
HR-FMLA/09 Protected Leave Notice of Eligibility  
HR-FMLA/10 Protected Leave Rights and Responsibilities under FMLA/OFLA  
HR-FMLA/11 Release of Return to Work  
HR-FMLA/12 Cover Letter to Employee  
HR-FMLA/13 Supervisor Notification Memo  
HR-FMLA/14 Protected Leave Expiring Notice to Employee  
HR-FMLA/15 Protected Leave Return to Duty Supervisor Memo  
HR-FMLA/16 Protected Leave FMLA Enrollment Notice for WC Leave

## 15. References

Family Medical Leave Act (FMLA) of 1993 – [29 CFR 825.301](#)

Family Medical Leave Act National Defense Authorization Act of 2010 Amendments  
[\(2010 NDAA\)](#)

Oregon Family Leave Act (OFLA) – [ORS 659A.150-659A.186](#)

Oregon Military Family Leave Act (OMFLA) – [ORS 659A.090-659A.099](#)

Oregon Crime Victims Law – [ORS 659A.190-659A.198](#)

Oregon Victims of Certain Crimes Leave Act (OVCCLA) – [ORS 659.A270-659A.285](#)

Oregon Paid Family Medical Leave Insurance - OAR 471-070-0010-8540, ORS 657B.340

## 16. Review of Policy and Procedures

This policy will be reviewed every three years or as state and federal regulations are revised and necessitate a change in the policy or procedures.

Adopted: February 2017

Revised: May 2021

January 2022

September 2023